toba L. Rep. 537. Although one is so afflicted with disease that he will die from it shortly yet if by accidental means he dies sooner of the disease it is a death by accident. *Hooper v. Standard Life and Acc. Ins. Co.*, 148 S. W. (Mo.) 116. Death from apoplexy caused by physical shock such as a fall is within an accident policy. *Hall v. Am. Masonic Acc. Ass'n.* 86 Wis. 518; *Nat. Benevolent Ass'n. v. Grauman*, 107 Ind. 288. One English decision has held that inability to work caused by mental shock from an impending train accident came within a clause in an insurance policy, "in case of his being incapacitated from employment by reason of accident." *Pugh v. The London Brighton & South Coast Ry. Co.*, L. R. 2, Q. B. D. 248. Tort actions for damages for injuries caused by mental suffering are distinguished. *Pugh v. Ry. Co.* (supra), citing *Victorian Rys. Commissioners v. Coultas*, 13 App. Cas. 222.

INSURANCE—ACTIONS ON POLICY—WAIVER.—CRANSTON V. WEST COAST LIFE INSURANCE CO., 142 PAC. (OR.) 762. *Held*, where a policy contains a condition that it shall not go into effect until the policy is delivered and the first premium is paid and that no agent has power to modify this provision, the insurer waives the condition of the policy, where the agent, without express authority, delivers the policy and accepts as payment the note of the insured.

Where the agent is intrusted with a policy for the purpose of delivery, and does deliver it, though in violation of a provision of the policy as to payment, it has been held that the assured has a right to assume that prepayment has been waived. *Young v. Hartford Fire Ins. Co.*, 45 Iowa 377; *Boehen v. Williamsburgh City Ins. Co.*, 35 N. Y. 131; *Bodine v. Exchange Fire Ins. Co.*, 51 N. Y. 117; *Contra, Russell v. Prudential Ins. Co.*, 176 N. Y. 178. Haight, J., *dissenting*. The theory seems to be that by giving the policy to an agent for delivery and the delivery by the agent, without payment of the first premium by the insured, the insurer has conferred authority on the agent to waive that provision of the policy. The case accords with the weight of authority.

NEGLIGENCE—INJURY—PROXIMATE CAUSE.—NIRDLINGER V. AM. DISTRICT TELEGRAPH CO., 91 ATL. (PA.) 883.—*Held*, where the injury follows directly from the negligence, and might or ought to have been foreseen by the defendant as likely to result from his act, there the negligence is the proximate cause of the injury.

The court here uses the test of foresight to determine the proximate cause. In general, a wrong-doer is responsible for the natural and proximate consequences of his misconduct. *Ehrgott v. Mayor etc. of the City of New York*, 96 N. Y. 264. On the question of negligence, it is material to consider what a prudent man might reasonably have anticipated; but when negligence is once established, that consideration is entirely immaterial on the question of how far that negligence imposes liability. *Isham v. Dow's Estate*, 70 Vt. 588. When negligence is established, change in condition may carry the result of the negligence further than it would otherwise have gone, and yet liability attach for the conse-

quent injuries although entirely unforeseen. *Ide v. Boston & Maine Ry.*, 83 Vt. 66. The person guilty of the negligent act will not be excused for the reason that the particular consequences were unusual and could not ordinarily be foreseen. *Graney et ux. v. St. L., I. M., & S. Ry. Co.*, 140 Mo. 89; *Ala. G. S. Ry. Co. v. Chapman*, 80 Ala. 615; *Schumaker v. St. P. & D. Ry. Co.*, 46 Minn. 39; *Hubbard v. Bartholomew*, 144 N. W. 13; *Heiting v. C., R. I., & P. Co.*, 229 Ill. 390. The injurious, proximate, and natural consequences of an act of negligence are always deemed to be foreseen. *El Paso S. W. Ry. Co. v. Barrett*, 101 S. W. 1025. This mode of stating the law (as supra) is misleading, if not positively inaccurate. It confounds and mixes the definition of negligence with that of proximate cause. What a man may reasonably anticipate is important, and may be decisive in determining whether an act is negligent, but is not at all decisive in determining whether that act is the proximate cause of an injury which ensues. *Hudson v. Ry.*, 142 N. C. 198; *Smith v. London & S. W. Ry. Co.*, L. R., 6 C. P. 14. The negligence is the proximate cause if, after the injury is complete, the injury appears to have been a natural and probable consequence of it. *Fishburn v. Ry. Co.*, 127 Iowa 492; *Marsh v. Paper Co.*, 101 Me. 89; *Hill v. Winsor*, 118 Mass. 251. In a word, the proper test of negligence is foresight, but of proximate cause is hindsight.

REFORMATION OF INSTRUMENTS—MUTUAL MISTAKE—EQUITABLE RELIEF.—PARCHEN V. CHESSMAN, 142 PAC. (MONT.) 631.—*Held*, Reformation will be granted, where, through the mistake of a scrivener, terms are inserted in a negotiable note not in accord with the actual agreement and the fact that the plaintiff may have been negligent in signing it without reading it is not in itself sufficient ground for denial of relief.

Many of the books declare that no relief can be had under such circumstances. 2 *Herman on Estoppel and Res Judicata*, sec. 1004; 1 *Daniel on Negotiable Instruments*, sec. 849; 1 *Page on Contracts*, sec. 76. So in this same jurisdiction it was *held* freedom from negligence is a condition precedent to relief. *American Min. Co. v. Bos. Min. Co.*, Mont. 476. And the same view was taken in *Hennessey v. Holmes et al.*, 46 Mont. 89, *Brantly, J.*, the author of this opinion, concurring. So in *Grieve v. Grieve*, 15 Wyo. 358; *Met. Loan Ass. v. Esche*, 75 Cal. 513; *Snelgrove v. Earl*, 17 Utah 321; *Reed v. Coughran*, 21 S. D. 257. In *Ackerman v. Begrish*, 50 Atl. 673, no reformation was allowed, though in that case the party seeking reformation was trying to enforce a "hard bargain." Negligence will not deprive a party of his remedy if there be fraud. *Ward v. Spelts & Klosterman*, 39 Nebr. 809; *Hitchins v. Pettingill*, 58 N. H. 3, Contra; *Moorman v. Collier*, 32 Iowa 138. But where the party has been slow to ask for reformation he can have no remedy. *Van Houten v. Van Houten*, 68 N. J. Eq. 358; *Mills v. Lockwood*, 42 Ill. 111, Contra. In *Cole & Hart v. Williams*, 12 Nebr. 440, it was *held* fraudulent to attempt to enforce a writing executed by mutual mistake. In any cases of reformation the evidence must clearly show what the intended agreement was. *Strong v. Gammell*, 68 Nebr. 709. If this does appear there is authority that reformation may be had. *Werner v. Rawson*, 89 Ga. 619; *Smith v. Wakeman*, 114 Mich. 611; *Newland v. First*